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EXAMINER	
WALSH, JOHN B	

ART UNIT	PAPER NUMBER
2151	

DATE MAILED: 11/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/925,861	RICHARDSON, DAVID E.	
	Examiner	Art Unit	
	John B. Walsh	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-27 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-27 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☑ The specification is objected to by the Examiner.

10)☑ The drawing(s) filed on _____ is/are: a)☑ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 4/7/03, 7/11/02, 8/9/01
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because on line 1 replace "on" with "one". Correction is required. See MPEP § 608.01(b).

Claim Objections

2. Claim 19 is objected to because of the following informalities: Claim 19, line 2 – replace "and" with "an". Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-27 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,571,285 to Groath et al.

As concerns claims 1-7, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138.

As concerns claim 1, an electronic network comprising: a first electronic device (a first electronic device on the network) associated with a second electronic device (a second electronic device on the network), said association providing for the transfer of data between said first

electronic device and said second electronic device; said first electronic device being adapted to: measure the response time (figure 10, 1000) of data transfers between said first electronic device and said second electronic device; compare the measured response time (1004) to a preselected response time; and provide an indication (1006) if said measured response time greater than said preselected response time.

As concerns claim 2, wherein said first electronic device is a computer (computer on the network).

As concerns claim 3, further comprising a computer (first electronic device on the network is a computer) associated with said first electronic device, said computer being adapted to establish said preselected response time (1002) within said electronic device.

As concerns claim 4, further comprising a computer associated with said first electronic device said first electronic device providing said indication (1006) to said computer.

As concerns claim 5, further comprising at least one third electronic device (a third electronic device on the network; column 31, line 37) operatively connected between said first electronic device and said second electronic device, and wherein said response time is a plurality of response times between said first electronic device and said at least one third electronic device and between said at least one third electronic device and said second electronic device (the network parameter selected to monitor the particular response time).

As concerns claim 6, wherein said first electronic device adapted to measure response time of data transfers between said first electronic device and said second electronic device and compare the measured response time to said preselected response time at preselected time intervals (poll rate; column 32, line 59).

As concerns claims 7 and 13, wherein said indication includes said measured response time (302).

As concerns claim 8, a computer network comprising: a first computer (a first computer on the network) associated with at least one first electronic device (a first electronic device on the network), the association providing for the transfer of data between said first computer and said at least one first electronic device; said first computer having a computer-readable medium (figure 1) associated therewith, said computer-readable medium containing instructions for controlling said first computer to monitor said network by: measuring the response time (1004) of data transfers between said first computer and said at least one first electronic device; comparing the measured response time (1004) to a preselected response time; and providing an indication (1006) if said measured response time is greater than said preselected response time.

As concerns claim 9, further comprising a second computer (a second computer on the network) operatively connected to said first computer, said second computer having computer-readable medium (figure 1) associated therewith, said computer-readable medium containing instructions establishing said preselected time response (1002, column 3, line 52-column 4, line 11 and figure 1 for computer readable medium) in said first computer.

As concerns claim 10, further comprising a second computer operatively associated with said computer, said second computer having computer-readable medium (figure 1, a computer has a computer-readable medium) associated therewith, said computer-readable medium containing instructions for receiving said indication from said first computer (instructions are data stored in memory; also column 178, line 26).

As concerns claim 11, wherein said computer-readable medium of said second computer

contains instructions for displaying a graphical representation of said network, wherein the portion said network causing said measured response time to exceed said preselected response time is distinguishable from other portions of said representation of said network (abstract, conveyed graphically; also column 178, lines 5-7).

As concerns claim 12, wherein said computer-readable medium measures said response time and compares said response time said preselected response time at a preselected time interval (1004).

As concerns claim 14, wherein said indication includes said preselected response time (1006; claim 6 and claim 8 (columns 178 and 179)).

As concerns claim 15, further comprising at least one second electronic device (a second electronic device on the network) operatively connected between said first computer and said at least one first electronic device.

As concerns claim 16, wherein at least one second electronic device is a router (network has routers; column 31, line 20).

As concerns claim 17, a method for monitoring a computer network said method comprising: establishing (1002) a preselected data response time between a first computer and at least one first electronic device; measuring (1004) the actual data response time between said first computer and said at least one first electronic device; comparing (1004) said preselected data response time to said actual data response time; and providing an indication (1006) said actual data response time is greater than said preselected data response time.

As concerns claim 18, wherein said establishing a preselected data response time further

comprises using a second computer (a second computer on the network) to establish a preselected data response time in said first computer.

As concerns claim 19, wherein said providing an indication comprises providing an indication to a second computer if said actual data response time is greater than said preselected data response time (1006).

As concerns claim 20, wherein said at least one first electronic device is a router (network has routers, column 31, line 20).

As concerns claim 21, wherein said one first electronic device is a computer (network has computers such that the first electronic device is a computer).

As concerns claim 22, wherein said measuring and said comparing are performed at preselected time intervals (poll rate, column 32, line 59).

As concerns claim 23, wherein said providing an indication further comprises providing said measured response time (302).

As concerns claim 24, wherein said providing an indication further comprises providing said preselected response time (1006, claim 6 and claim 8 (columns 178 and 179)).

As concerns claim 25, a method for monitoring a computer network, wherein said computer network of the type comprising least one electronic device (an electronic device on the network) operatively associated between a first computer (a first computer on the network) and a second computer (a second computer on the network), said method comprising: establishing a first preselected data transfer time (1002) between said first computer and said at least one electronic device; establishing a second preselected data transfer time (1002, column 31, line 37 – plurality of components) between said at least one electronic device and said second computer;

measuring (1004, measured during monitoring) a first actual data transfer time between said first computer and said at least one electronic device; measuring (1004, measured during monitoring) a second actual data transfer time between said at least one electronic device and said second computer; comparing said first preselected data transfer time to said first actual data transfer time (1004); comparing said second preselected data transfer time to said second actual data transfer time (1004); and providing an indication if either said first actual data transfer time is greater than said first preselected data transfer time or if said second actual data transfer time is greater than said second preselected data transfer time (1006).

As concerns claim 26, a method for monitoring a computer network, wherein said computer network is of the type comprising least one electronic device operatively associated between a first computer (a first computer on the network) and a second computer (a second computer on the network), said method comprising: establishing a first preselected data transfer time between said first computer and said at least one electronic device (1004); establishing a second preselected data transfer time between said at least one electronic device and said second computer (1002, column 31, line 37 – plurality of components); executing a trace route routine to measure first actual data transfer time between said first computer and said at least one electronic device (well known in the art to use trace route routine to measure transfer time, see USPN 6,697,969); executing a trace route routine to measure second actual data transfer time between said at least one electronic device and said second computer (well known in the art to use trace route routine to measure transfer time, see USPN 6,697,969); comparing said first preselected data transfer time to said first actual data transfer time (1004); comparing said second preselected data transfer time to said second actual data transfer time (1004); and providing an indication if

either said first actual data transfer time is greater than said first preselected data transfer time or if said second actual data transfer time is greater than said second preselected data transfer time (1006).

As concerns claim 27, a computer network monitoring device comprising: measuring means (1004) for measuring the data response time between a first computer and at least one electronic device; comparing means (1004) for comparing the measured data response time between said first computer and said at least one electronic device to a preselected data response time; and indicating means (1006) for providing an indication if said measured data response time is greater than said preselected response time.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claim 26 is rejected under 35 U.S.C. 102(e) as anticipated by U.S. Patent No. 6,571,285 to Groath et al. or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 6,571,285 to Groath et al. in view of U.S. Patent No. 6,697,969 to Merriam.

Groath et al. '285 does not explicitly recite a trace route routine.

Merriam '969 teaches a trace route routine for measuring response time (column 5, lines 38-41).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a trace route routine, in order to provide an accurate utility to measure response time.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 703-305-0444. The examiner can normally be reached on Monday-Friday from 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 703-308-6687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

John B. Walsh
Primary Examiner
Art Unit 2151